LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
DEC 17 1969
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 961

RUSSELL DEAL, TED HARDING, DON E. DEPPERMANN, LELAND SLOAN, ENO LOOK, ROY MARTIN, HARRY MALONE, HARRY MULVANEY, HENRY DEPPERMANN, H. J. WEYHRICH, HOWARD BEAL, CLINTON GESSELL, ANDY FLYNN, EDWARD WOERTZ, AARON STAHL, HARRY TAYLOR, LEE STICKLE, RAYMOND LADD, SHERM McCLOUTH and EVERETT BITNER,

Petitioners,

vs.

MILO W. NELSON, WILLIAM Q. DRAKE, HOWARD S. BEENEY, ROBERT THIEMANN, RUSSELL PETERS and VICTOR KASEL,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

WILLIAM J. VOELKER, JR.
300 Central Building
Peoria, Illinois 61602

JOHN F. SLOAN
1007 Jefferson Building
Peoria, Illinois 61602

Counsel for Petitioners

MIDWEST LAW PRINTING CO., CHICAGO 60601, FINANCIAL 6-3998

INDEX

PAGE

Opinions Below 1

Jurisdiction 2

Questions Presented 2

Constitutional and Statutory Provisions Involved 2

Statement of Facts 3

Reasons for Granting the Writ 6

I.

The State Court has decided a Federal question of substance not heretofore determined by this Court 6

II.

The statute assessing these farmers' lands at "fair cash value" violates the Fourteenth Amendment 6

III.

Section 524, Chapter 120, Illinois Revised Statutes, 1967, violates the due process clause of the Fourteenth Amendment 9

Appendices:

A—Opinion of the Supreme Court of Illinois 1a

B—Judgment or Decree of the Circuit Court of Peoria County, Illinois 9a

C—Constitutional provisions and Statutes 10a

List Of Authorities Cited

Cases:

American Oil Co. v. Neill, 380 U.S. 451, 14 L. ed. 2d 1, 5 6
Apex Hosiery Co. v. Leader, 310 U.S. 469, 84 L. ed. 1311, 1318 7
Chicago M. & St. L.P.R. Co. v. Minnesota, 134 U.S. 418, 33 L. ed. 970 8
City of Chicago v. Callender, 396 Ill. 371, 380 9
Covington & L. Turnpike Rd. Co. v. Sandford, 164 U.S. 578, 41 L. ed. 560 8
Cummings v. Merchants Nat. Bank of Toledo, 101 U.S. 153, 25 L. ed. 903 8
Department of Public Works v. Hubbard, 363 Ill. 99, 102 9
Department of Public Works v. Pellini, 7 Ill. 2nd 367, 373 9
Edwards v. California, 314 U.S. 160, 86 L. ed. 119, 125 7
Gast Realty & I. Co. v. Schneider Granite Co., 240 U.S. 55, 60 L. ed. 523 8
Iowa-Des Moines Nat. Bank v. Bennett, 284 U.S. 239, 76 L. ed. 265 8
Louisville N. R. Co. v. Greene, 244 U.S. 522, 61 L. ed. 1291 8
Raymond v. Chicago Union T. Co., 207 U.S. 20, 35, 52 L. ed. 78 8
Royster Guano Co. v. Virginia, 253 U.S. 412, 64 L. ed. 989 8
St. Louis v. San Francisco Ry. Co., 156 U.S. 649, 39 L. ed. 567 8

Schlesinger v. Wisconsin, 270 U.S. 227, 70 L. ed. 556, 564 8
Southern R. Co. v. Greene, 216 U.S. 400, 54 L. ed. 536 8
Union P. R. Co. v. Weld Coring, 247 U.S. 282, 62 L. ed. 110 8
W. A. Mack, Inc. v. General Motors Corp., 260 F. 2d, 886, 890 7

Constitutional Provisions and Statutes:

Article IX Section 1 of the Illinois Constitution 10a
Fourteenth Amendment to the Constitution of the United States 10a
Section 139 §60 Illinois Revised Statutes 1965 ..... 10a
Section 501 Chapter 120 Illinois Revised Statutes 1965 ..... 6, 10a
Section 513 Chapter 120 Illinois Revised Statutes 1965 ..... 11a
Section 524 Chapter 120 Illinois Revised Statutes 1965 ..... 9, 12a
Section 576 Chapter 120 Illinois Revised Statutes 1965 ..... 12a
Section 580 Chapter 120 Illinois Revised Statutes 1965 ..... 12a

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No.

RUSSELL DEAL, TED HARDING, DON E. DEPPERMANN, LELAND SLOAN, ENO LOOK, ROY MARTIN, HARRY MALONE, HARRY MULVANEY, HENRY DEPPERMANN, H. J. WEYHRICH, HOWARD BEAL, CLINTON GESSELL, ANDY FLYNN, EDWARD WOERTZ, AARON STAHL, HARRY TAYLOR, LEE STICKLE, RAYMOND LADD, SHERM McCLOUTH and EVERETT BITNER,

Petitioners,

vs.

MILO W. NELSON, WILLIAM Q. DRAKE, HOWARD S. BEENEY, ROBERT THIEMANN, RUSSELL PETERS and VICTOR KASEL,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

The petitioners and approximately 750 others whose names are appended to the original Complaint pray that a Writ of Certiorari issue to review the opinion and judgment of the Supreme Court of Illinois rendered in these proceedings on September 26, 1969.

OPINIONS BELOW.

The opinion of the Supreme Court of Illinois, as yet unreported in the Illinois Reports, but reported in 251 N.E. 2d 234, appears at Appendix A. The Circuit Court of the Tenth Judicial Circuit, Peoria County, rendered no opinion. Its judgment or decree appears at Appendix B.

JURISDICTION.

The order or judgment of the Supreme Court of Illinois was entered on September 26, 1969. This Petition for a Writ of Certiorari was filed less than 90 days from said date. The jurisdiction of this court is invoked under 28 U.S.C.A. § 1257 (3).

QUESTIONS PRESENTED.

Petitioners are farmers, or farm owners, who brought suit to invalidate the assessment of real estate taxes on their property and to enjoin their collection. The County Board of Supervisors had hired an Ohio appraisal firm, Cole-Layer-Trumble Co., to value all lands in Peoria County. Their valuations and the assessed values made thereon and the statutes on which they were based are challenged.

The questions presented are:

1. Whether Section 501 Chapter 120 Illinois Revised Statutes 1967 (Section 20 of the Revenue Act) as it applies to and affects these petitioners violates the due process clause of the Fourteenth Amendment.

2. Whether Section 524, Chapter 120 Illinois Revised Statutes (Section 43 of the Revenue Act) in its method of valuation violates the due process clause of the Fourteenth Amendment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

These provisions are in Appendix C.

STATEMENT OF FACTS.

The Peoria County Board of Supervisors hired an appraisal firm from Ohio named Cole-Layer-Trumble Co. to set up a property record system for all real estate in the county and to value each tract. This firm then made up two types of documents: (1) a property record card as to each tract of land and (2) for each township a book called "55% Abstract." This book listed each tract in the township and opposite each had a figure which represented 55% of the full value. The practice in the county was to assess property at 55% of its full value.

The elected assessors for the 20 townships in Peoria County were called to a meeting by the Supervisor of Assessments. The books were delivered to them at the end of which was attached a printed form affidavit. This affidavit stated that the book contained a full and complete list of all real estate in the township and the assessed values set down in the column opposite each property was a just and equal assessment according to law. The assessors were told by the Supervisor of Assessments they could not change any figures and should sign the affidavit and return the books although they could be heard on valuations. All of the assessors except four refused to sign the affidavit and returned the books as prepared by Cole-Layer-Trumble Co. One assessor made his own assessment after viewing each piece of property and changed the figures in the book to reflect his assessment. Another made up his own book after viewing each piece. Another returned the book altering the affidavit to show he did not make the assessment that Cole-Layer-Trumble Co. did.

The Supervisor of Assessments published the figures made by Cole-Layer-Trumble Co. and refused to publish any others.

As a result farmers in the county were so shocked by increased valuations, that they banded together and formed the Peoria County Taxpayers Association and the plaintiffs in this case number over 750.

At the trial of the case the above facts were shown without contradiction. Five representative farmers testified as to their farming operations and the valuations placed on their farms. They each testified as to their long experience in farming and how they farmed their respective farms to their fullest extent and in accordance with good standards of farming in the area. They each produced their Schedules F to their income tax returns for five years and testified as to the average return each received based on the valuation set by Cole-Layer-Trumble Co. The percentages of return were as follows: Russell Deal—3% (without any allowance for his own labor); Hieronymous Weyhrich 1%; Clinton Gessell 1%; Eno Look ¼%; Howard Beal 3-4% (without any allowance for his own work).

The Circuit Court entered a decree dismissing the Complaint for want of equity. This was affirmed by the Supreme Court of Illinois.

The constitutional questions were raised in the Amended Complaint filed in the Circuit Court. By holding the assessments valid the Circuit Court necessarily upheld the constitutionality of the statutes. The Supreme Court in its opinion expressly found the questions had been raised:

> "Plaintiffs next attack upon two grounds the constitutionality of Section 20 of the Revenue Act as

amended (Ill. Rev. Stat., 1967, Ch. 120, par. 501). It provides: '(1) Each tract or lot of real property shall be valued at its fair cash value, estimated at the price it would bring at a fair, voluntary sale.' They first argue that land presently used for farming, but suitable for a higher and better use, i.e. residential or urban, must be assessed in accordance with its present use. If that land is valued at a figure greater than its value as farmland, they urge, compelling payment of taxes on this additional valuation constitutes a deprivation of property without due process of law."

The opinion also refers to our constitutional attack on Section 43 of the Revenue Act.

REASONS FOR GRANTING THE WRIT.

I. The State Court has decided a Federal question of substance not heretofore determined by this Court.

This case presents a matter of national importance to the economic life of our country. It deals with the life and death of our farming families. One of the main causes of the demise of a farmer as such is the ever increasing tax he must pay because of its being based on the ever increasing "fair market value" of his land bid up because of increasing populations and demands for more land.

We have found no case where, under present circumstances, the constitutionality of a statute assessing his property at "fair market value" has ever been tested.

II. The statute assessing these farmers' lands at "fair cash value" violates the Fourteenth Amendment.

> "When passing on the constitutionality of a state taxing scheme, it is firmly established that this Court concerns itself with the practical operation of the tax, that is, substance rather than form." (*American Oil Co.* v. *Neill,* 380 U.S. 451, 14 L. ed. 2d 1, 5)

It is submitted that in passing on this statute (Ch. 120, § 501), this Court should consider its practical operation in the present economic system. Presumably on its face it treats all taxpayers alike, because it assesses all property at its fair cash value. But under present day conditions the farmer is helpless to avoid its oppression, but others whose real estate is a source of livelihood can and do avoid it.

Its harsh and drastic effect on farmers in the changing economy of our country results from a combination of circumstances. The ever increasing population reaches out and devours more farmland for homes, for factories, for recreational areas. This demand bids up the "fair market value" of farmland beyond what it is capable of returning as farmland. This condition becomes increasingly rapid in populous states like Illinois. Yet the price a farmer receives from crops and livestock has remained static for a number of years. He has no control over the prices he receives. They are set by the market.

On the other hand, others who use their land as a source of livelihood can raise their prices to cover increased costs from rising real estate taxes. The farmer, however, is caught in the squeeze between the low prices for his products and the increase in the "fair market value" of his farmland, plus his increased costs, plus increase in demands of taxing bodies for more schools, higher salaries and other costs. These are all matters of common knowledge of which courts may take judicial notice. (*Edwards* v. *California,* 314 U.S. 160, 86 L. ed. 119, 125; *Apex Hosiery Co.* v. *Leader,* 310 U.S. 469, 84 L. ed. 1311, 1318; *W. A. Mack, Inc.* v. *General Motors Corp.,* 260 F. 2d, 886, 890).

Consequently this statute which values his land on the non-existent fictitious supposition that it is being offered on the market by him as a willing seller to a willing buyer, deprives him of his property without due process of law. He is being taxed on an unrealized capital gain and this goes on increasingly year after year. Because of his economic condition in present times, it singles him out for oppressive treatment not shared by others using land for a livelihood.

Where a state's taxing system singles out certain taxpayers to bear a heavier burden than others similarly situated, it deprives those taxpayers of their property without due process of law. (*Raymond* v. *Chicago Union T. Co.*, 207 U.S. 20, 35, 52 L. ed. 78; *Schlesinger* v. *Wisconsin*, 270 U.S. 227, 70 L. ed. 556, 564; *Union P. R. Co.* v. *Weld Corning*, 247 U.S. 282, 62 L. ed. 110; *Cummings* v. *Merchants Nat. Bank of Toledo*, 101 U.S. 153, 25 L. ed. 903; *Louisville N. R. Co.* v. *Greene*, 244 U.S. 522, 61 L. ed. 1291; *Royster Guano Co.* v. *Virginia*, 253 U.S. 412, 64 L. ed. 989; *Southern R. Co.* v. *Greene*, 216 U.S. 400, 54 L. ed. 536; *Gast Realty & I. Co.* v. *Schneider Granite Co.*, 240 U.S. 55, 60 L. ed. 523; *Iowa-Des Moines Nat. Bank* v. *Bennett*, 284 U.S. 239, 76 L. ed. 265.)

It has been held that a public utility is entitled to a fair return on its property and when its properties were improperly valued, it was deprived of its property without due process of law. (*St. Louis* v. *San Francisco Ry. Co.*, 156 U.S. 649, 39 L. ed. 567; *Covington & L. Turnpike Rd. Co.* v. *Sandford*, 164 U.S. 578, 41 L. ed. 560; *Chicago M. & St. L.P.R. Co.* v. *Minnesota*, 134 U.S. 418, 33 L. ed. 970.) While conceding this rule, the Illinois Supreme Court in its opinion felt the rule was not applicable to farmers since "there is no evidence here that plaintiff farmers are compelled by State regulations to continue their farming operations or are subject to any State regulations as to prices they charge for the commodities they sell." We submit that as a practical matter one engaged in operating his farm as his means of livelihood has to continue farming operations and the prices he charges for his commodities are fixed so as to be beyond his control, so that the effect on him of the improper valuation caused by "fair market value" is the same as improper valuation by a state commerce commission.

It is suggested that the statute to be constitutional should have valued property on the basis of its "useful value". It would then operate equally on all taxpayers.

III. Section 524, Chapter 120, Illinois Revised Statutes, 1967, violates the due process clause of the Fourteenth Amendment.

Section 524 provides that in assessing property the value of lands and improvements shall be set down in separate columns and the two shall be added together to arrive at the total value. In other words, in figuring fair, cash, market value, the improvements are valued separately and the land is valued separately and the two are added together to arrive at the full value. Yet in cases before the Supreme Court of Illinois where the issue was that of fair cash market value, that court consistently held that it was improper to arrive at such value by separately valuing the land and improvements and adding the two together. (*Department of Public Works* v. *Hubbard,* 363 Ill. 99, 102; *City of Chicago* v. *Callender,* 396 Ill. 371, 380; *Department of Public Works* v. *Pellini,* 7 Ill. 2d 367, 373.)

It is submitted that where a legislative act deprives a taxpayer of the safeguards that have been established by the courts in the valuation of his property, he is being deprived of his property, without due process of law.

The Supreme Court of Illinois did not attempt to answer this contention other than to say that there was no proof that the 100% of assessed value exceeded fair cash market value, and therefore, the taxpayer had not proved he was injured by the statutory method of valuations.

While plaintiffs may not be able to prove that they lost a certain number of dollars because of this particular sec-

tion of the Revenue Act, they are aggrieved persons as a result of the combined application of this and other sections of the Revenue Act.

Respectfully submitted,

WILLIAM J. VOELKER, JR.
300 Central Building
Peoria, Illinois 61602

JOHN F. SLOAN
1007 Jefferson Building
Peoria, Illinois 61602

Counsel for Petitioners

APPENDIX A

Docket No. 41773—Agenda 37—May, 1969.

RUSSELL DEAL *et al.*, Appellants, *vs.* MILO W. NELSON *et al.*, Appellees.

Mr. CHIEF JUSTICE UNDERWOOD delivered the opinion of the court:

This direct appeal questions the propriety of a judgment of the circuit court of Peoria County which dismissed for want of equity a complaint for an injunction to restrain the collection of 1967 real-estate taxes, or, in the alternative, to enjoin such collections insofar as the assessments upon which they are based exceed the 1966 assessments.

Plaintiffs, who are the officers and governing board members of the Peoria County Taxpayer's Association, filed their complaint on behalf of themselves and some 800 association members, all of whom own real estate in Peoria County. Among the undisputed facts are the following: In 1951 section 25.16 of "AN ACT to revise the law in relation to counties", as approved July 9, 1951 (Ill. Rev. Stat. 1951, ch. 34, par. 25.16), authorized county boards: "To expend monies for the preparation, establishment and maintenance of a detailed property record system which would provide information useful to assessment officials. Such record shall be available to all assessing officials. The County Board may enter into contracts with persons, firms or corporations for the preparation and establishment of such record system." In 1959 this provision was amended by enactment of section 25.16a (Ill. Rev. Stat. 1959, ch. 34, par. 425) which added the following paragraph: "The detailed property

record system shall include up-to-date and complete tax maps except where these are otherwise already available or ordered, ownership lists, valuation standards, property record cards, including appraisals for all or any part of the property in the county in accordance with reasonable rules and procedures prescribed by the Department of Revenue, but such system and records shall not be considered to be assessments nor limit the powers and duties of assessing officials." In *People ex rel. Spitzer* v. *County of La Salle,* 20 Ill. 2d 18, we upheld the constitutionality of this legislation and sustained the power of the county board of La Salle County to contract with a professional firm for the preparation of a detailed property record system. In 1965 section 25.16a was further amended to provide that: "* * * when any reappraisal of property is made and included in such record system, such assessing officials shall use the reappraisal value as a basis for assessment purposes. Ill. Rev. Stat. 1965, ch. 34, par. 425.

In preparation for the 1967 quadrennial assessment, the Peoria County Board retained the Cole-Layer-Trumble Company to prepare a property record system. Cole-Layer-Trumble prepared a 100% valuation abstract, a 55% valuation abstract and a property record card for each parcel of real estate in the county, and upon completion of the work the abstracts and record cards, together with the prior year's assessment books, were delivered to the local assessors about April 1, 1967. The local assessors were told not to make any notations or changes in these books. Later they were notified by mail that they could arrange for an appointment to discuss the appraisal of any property with members of the Cole-Layer-Trumble firm: several days

were set aside for this purpose and some assessors did appear and discuss property valuations. There was attached to these books a printed form which stated that the figures in the book were the assessed value made by the township assessor. Four of Peoria County's 20 assessors signed the form, and 16 refused to sign it. Two of these who refused to sign submitted their own valuations for the property within their township. The supervisor of assessments reviewed the appraisals contained in the 55% abstract books, checked them for arithmetical errors and made some corrections based on errors revealed by consultations with assessors and then published the appraisals contained in the 55% abstract books as the assessments made by him. This action resulted in the present litigation.

Plaintiffs contend that the assessments were in fact made by Cole-Layer-Trumble Company, who were not authorized by law to make assessments, rather than the public officials who were authorized to make them. Plaintiffs point out that section 32 of the Revenue Act of 1939 as amended, (Ill. Rev. Stat. 1967, ch. 120, par. 513) required that before January 1, 1967, the county clerk should prepare "the list of lands and lots to be assessed * * * in books to be provided for that purpose." The evidence establishes that he never made up such books. Plaintiffs further point out that section 41 of the Revenue Act of 1939 as amended (Ill. Rev. Stat. 1967, ch. 120, par. 522) required the supervisor of assessments to call on the county clerk before January 1, 1967, to receive the real property assessment books prepared by the latter. The evidence clearly shows that the supervisor of assessments did not do so.

Plaintiffs complain that the local assessors were precluded from making an independent assessment of each

piece of property. The defendants do not seem to dispute this, but cite section 95 of the Revenue Act of 1939 (Ill. Rev. Stat. 1967, ch. 120, par. 576) as authority for the action taken. That section provides that the supervisor of assessments "shall have the same authority as the township assessor to assess and to make changes or alterations in the assessment of property, and shall assess and make such changes or alterations in the assessment of property as though originally made."

Section 1 of article IX of the Illinois constitution provides in part: "The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—such value to be ascertained by some person or persons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise; * * *." It is readily apparent that the intent of the drafters of the constitution was to give to the General Assembly well-nigh unlimited discretion in determining the personnel in whom responsibility for assessing the value of property would be vested. The office of township assessor is one created by the legislature for this purpose, and the legislature may abolish or limit as it chooses the powers of that officer. The legislature accordingly acted within its authority when it gave the supervisor of assessments "the same authority as the township assessor to assess * * *" (Ill. Rev. Stat. 1967, ch. 120, par. 576), and the supervisor of assessments was acting within constitutionally valid statutory authorization when he made the assessments against the property without the benefit, in many instances, of the prior independent assessment of the township assessor. It is clear that it was not originally the

legislative intent to completely by-pass the township assessor as a real-estate assessing official (*People ex rel. Spitzer* v. *County of La Salle,* 20 Ill. 2d 18, 25-26), but the 1965 amendment requiring assessing officials to "use the reappraisal value as a basis for assessment purposes" can be viewed only as a mandate to those officials to adopt the reappraisal figures, with such changes as subsequently occurring circumstances indicated necessary, as the basis for their assessments. It seems equally clear that the legislation authorizing county boards to contract with independent appraisal firms for county-wide reappraisals of real-estate values was intended to assist in establishing uniform valuation procedures and eliminating the inter-township disparities resulting from assessments by largely autonomous township assessors. A similar purpose is apparent in vesting the supervisor of assessments, a county official, with "the same authority as the township assessor to assess."

It must be conceded, as plaintiffs argue, that the township assessors were constrained to use the valuations arrived at by the appraisal firm. But the assessors were not precluded from disputing those valuations nor from submitting completely independent assessments, and two of them did so. Others met with the supervisor of assessments and with the appraisal firm, and all were afforded an opportunity to present such suggestions as they might have for valuation changes. The fact that those suggestions were not accepted does not invalidate the subsequent assessments by the supervisor of assessments. Nor does the fact that the final valuations adopted by that officer were apparently substantially those computed by the appraisal firm affect their validity, for section 25.16a specifically authorizes this procedure. We accordingly hold the procedure here utilized constitutionally permissible and legislatively authorized.

Plaintiffs next attack upon two grounds the constitutionality of section 20 of the Revenue Act of 1939, as amended. (Ill. Rev. Stat. 1967, ch. 120, par. 501.) It provides: "(1) Each tract or lot of real property shall be valued at its fair cash value, estimated at the price it would bring at a fair, voluntary sale." They first argue that land presently used for farming, but suitable for a higher and better use, *i.e.*, residential or urban, must be assessed in accordance with its present use. If that land is valued at a figure greater than its value as farmland, they urge, compelling payment of taxes on this additional valuation constitutes a deprivation of property without due process of law. Plaintiffs do not deny that the assessed valuations placed on their land represent its fair cash value. But they do contend and the evidence clearly shows that the valuations placed on some of their land by Cole-Layer-Trumble were considerably higher than its value solely for farming purposes. Numerous plaintiffs testified as to the profits from their farming operations. In one case the owner's return from his farming operation was only ¼% of the 100% valuation computed by Cole-Layer-Trumble Company. On the basis of this evidence, plaintiffs allege they have been deprived of their property without due process because their land was so highly valued as to deny them a fair return on their investment, citing *State Public Utilities Com. ex rel. Mitchell* v. *Chicago and West Towns Railway Co.*, 275 Ill. 555, 568. That case, however, is inapposite. It dealt with the rates charged by a State-regulated public utility and merely held that the regulating body should not deprive the utility of a reasonable profit on its investment. In direct contrast to a railroad or other utility, there is no evidence here that plaintiff farmers are compelled by State regula-

tions to continue their farming operations or are subject to any State regulations as to the prices they charge for the commodities they sell.

Plaintiffs also argue that the term "fair cash market value" was in common usage and known to the draftsmen at the time the constitution of 1870 was adopted. They therefore conclude that "the use of the unqualified word 'value' must be considered as expressing something other and different from the words 'fair cash market value'." We cannot accept this reasoning. Section 1 of article IX provides in part as follows: "The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property— * * *."

As we read this language, it contains no express method of valuation, but leaves to the legislature the manner of implementing the taxation authorized. As previously indicated, the legislature has provided that: "Each tract or lot of real property shall be valued at its fair cash value, estimated at the price it would bring at a fair, voluntary sale." (Ill. Rev. Stat. 1967, ch. 120, par. 501.) Although no reported case has reached the question of whether this method of valuation was in violation of section 1 of article IX, this court has often applied this test. (*E.g., People ex rel. Rhodes* v. *Turk,* 391 Ill. 424; *People ex rel. McGaughey* v. *Wilson,* 367 Ill. 494.) Plaintiffs quote extensively from *State* v. *Illinois Central Railroad Co.,* 27 Ill. 64. The *Illinois Central* case, however, does not support plaintiffs' position. There is no mention therein of any statutory requirement that valuation be on the basis of fair cash value; there is

such a provision here. (Ill. Rev. Stat. 1967, ch. 120, par. 501.) Secondly, there is no indication in that opinion that the taxpayer sought a valuation lower than the fair cash value of the property. The flaw in plaintiffs' argument is their insistence that valuation of their property must be controlled by the use to which they are putting it, even though its value for other purposes is implicitly conceded to be greater, and their insistence, in the case of property suitable only for farming, that the value upon which the assessment is based cannot exceed an amount upon which the net farm income constitutes a fair return. Plaintiffs do not seriously argue that their land would not sell for the 100% assessed valuation figure. The constitution's command is that the tax be in proportion to land "value"—not its "value for the purpose for which it is currently being used." Within constitutional limits, taxation is a legislative matter, and the legislature has determined that property shall be assessed on a fair cash value basis, "estimated at the price it would bring at a fair, voluntary sale." There is no evidence that the plaintiff's property was assessed on a basis other than that, and we cannot agree that use of that method here gives rise to any constitutional infirmity.

Plaintiffs maintain that section 43 of the Revenue Act of 1939, as amended, (Ill. Rev. Stat. 1967, ch. 120, par. 524) deprives them of their property without due process of law because that section requires that the value of lands and improvements shall be separately fixed. They support this contention only by reference to the law of eminent domain which holds improper in eminent domain cases the practice of valuing land and improvements separately and then adding the two. While taxation based upon a valuation grossly in excess of fair cash market value could conceivably

raise due-process questions, the weakness of plaintiff's argument here is the absence from this record of any proof that the 100% assessed valuation of their property exceeds, in any amount, its fair fash market value. Absence of such proof establishing that plaintiffs have been injured by employment of this statutorily prescribed assessment method makes further discussion of this contention unnecessary.

The judgment of the circuit court is affirmed.

Judgment affirmed.

APPENDIX B

This cause having come on to be heard upon Complaint and Answer; and the Court having heard testimony and arguments presented by counsel for both sides; and the Court further having considered the briefs of counsel;

It Is Hereby Ordered, Adjudged And Decreed, that the Complaint filed in this cause be dismissed for want of equity, costs assessed to Plaintiffs.

Enter: This 10th day of September, 1968.

/s/ Albert Pucci
Judge

APPENDIX C

The Fourteenth Amendment to the Constitution of the United States reads:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Article IX Setcion 1 of the Illinois Constitution reads in part as follows:

> "The general assembly shall provide revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—such value to be ascertained by some person or persons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise."

Section 501 Chapter 120 Illinois Revised Statutes 1965 reads as follows:

> "Real property shall be valued as follows:
> (1) Each tract or lot of real property shall be valued at its fair cash value, estimated at the price it would bring at a fair, voluntary sale."

Section 139 §60 Illinois Revised Statutes 1965 reads as follows:

> "On the day of the annual town meeting, in each town in the year 1957 and every four years thereafter,

there shall be elected by ballot one township clerk and one township assessor who shall hold office for a term of 4 years; and until their successors are elected and qualified."

Section 513 Chapter 120 Illinois Revised Statutes 1965 reads as follows:

"Each county clerk, before January 1 in each year of the quadrennial assessment, as provided in Section 43, shall make up the list of lands and lots to be assessed for taxes for the several towns or taxing districts in his county, in books to be provided for that purpose. Also he shall annually, before January 1, make up lists of lands and lots which are taxable, or which become taxable for the first time, and which are not already listed, and make up lists of lands and lots which have been subdivided and not listed by the proper description. The county clerk shall enter in the proper column, opposite the respective tracts or lots, the name of the owner thereof, so far as he is able to ascertain the same. Such lists shall contain columns in which may be shown the number of acres or lots improved, and the value thereof; the number of acres or lots not improved, and the value thereof, the total value, and such other information as may be required. The county clerk shall also have all blanks necessary in the assessment of real and personal property prepared and in readiness for delivery, and shall deliver such blanks to the assessors at the time such assessment books or lists are delivered. Such books or lists may be completed and delivered by towns or taxing districts without waiting for the completion of all such books or lists, but all assessment books or lists shall be delivered by the county clerk to the county assessor on or before the time specified in this Section. Such books or lists shall be made in duplicate."

(Constitutional Provisions and Statutes)

Section 524 Chapter 120 Illinois Revised Statutes 1965 reads as follows:

> "The assessor in person or his deputy shall actually view and determine as near as practicable the value of each tract or lot of land listed for taxation as of January 1, . . . and assess the same at its fair cash value, setting down the sum in the proper column in the books furnished him."

Section 576 Chapter 120 Illinois Revised Statutes 1965 reads as follows:

> "The supervisor of assessments shall have the same authority as the township assessor to assess and to make changes or alterations in the assessment of property, and shall assess and make such changes or alterations in the assessment of property as though originally made. Such changes by the supervisor of assessments in valuations returned by the township assessor shall be noted in a column provided therefor, and no change shall be made in the original figures."

Section 580 Chapter 120 Illinois Revised Statutes 1965 reads as follows:

> "The assessor shall add up and note the aggregate of each column in his assessment books of real and personal property; and shall also add in each book, under proper headings, a tabular statement, showing the footings of the several columns upon each page; and shall add up and set down under the respective headings the totals of the several columns. When an assessor returns several assessment books of real or personal property, he shall in addition to the tabular statement herein required, return a statement in like form, showing the totals of all the books."

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
FEB 10 1970
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 961

RUSSELL DEAL, TED HARDING, DON E. DEPPERMANN, LELAND SLOAN, ENO LOOK, ROY MARTIN, HARRY MALONE, HARRY MULVANEY, HENRY DEPPERMANN, H. J. WEYHRICH, HOWARD BEAL, CLINTON GESSELL, ANDY FLYNN, EDWARD WOERTZ, AARON STAHL, HARRY TAYLOR, LEE STICKLE, RAYMOND LADD, SHERM McCLOUTH and EVERETT BITNER,
Petitioners,

vs.

MILO W. NELSON, WILLIAM Q. DRAKE, HOWARD S. BEENEY, ROBERT THIEMANN, RUSSELL PETERS and VICTOR KASEL,
Respondents.

BRIEF

Of Repondents Opposing Petition for a Writ of Certiorari to the Supreme Court of Illinois

WILLIAM J. SCOTT
Attorney General, State of Illinois
By FRANCIS T. CROWE
Assistant Attorney General of Counsel
160 North LaSalle Street
Chicago, Illinois 60600

ROBERT S. CALKINS,
State's Attorney of Peoria County
Court House
Peoria, Illinois 61602
Counsel for Respondents

St. Louis Law Printing Co., Inc., 411-15 N. Eighth St. 63101 314-231-4477

LIST OF AUTHORITIES CITED

Page

Cases

A Magnano Co. v. Hamilton, 292 U. S. 40, 54 S. Ct. 599 ..... 2, 3

Gloucester Water Supply Co. v. Gloucester, 193 U. S. 580, 24 S. Ct. 557 2

Greene v. Louisville & Interurban R. Co., 244 U. S. 499, 37 S. Ct. 673, 61 L. ed. 1280 2

In re 168 Adams Bldg. Corporation, 105 F. 2d 704 .... 2, 3

Insurance Company v. The Treasurer of Kings County, 78 U. S. 204, 11 Wallace 204, 20 L. ed. 112 ..... 2, 3

Newburyport Water Co. v. Newburyport, 193 U. S. 561, 24 S. Ct. 553 2

Owens v. New York Central Railroad Company, 267 F. Supp. 252 ..... 2, 3

People ex rel. Harding, County Collector, v. Hart, 332 Ill. 467, 163 N. E. 769 ..... 2, 3

People ex rel. Toman, County Collector, v. Marine Trust Co., 375 Ill. 488, 31 N. E. 2d 933 ..... 2, 3

Tuttle v. Bell, County Collector, 377 Ill. 510, 37 N. E. 2d 180 ..... 1, 3

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 961

RUSSELL DEAL, TED HARDING, DON E. DEPPERMANN, LELAND SLOAN, ENO LOOK, ROY MARTIN, HARRY MALONE, HARRY MULVANEY, HENRY DEPPERMANN, H. J. WEYHRICH, HOWARD BEAL, CLINTON GESSELL, ANDY FLYNN, EDWARD WOERTZ, AARON STAHL, HARRY TAYLOR, LEE STICKLE, RAYMOND LADD, SHERM McCLOUTH and EVERETT BITNER,
Petitioners,

vs.

MILO W. NELSON, WILLIAM Q. DRAKE, HOWARD S. BEENEY, ROBERT THIEMANN, RUSSELL PETERS and VICTOR KASEL,
Respondents.

BRIEF

Of Repondents Opposing Petition for a Writ of Certiorari to the Supreme Court of Illinois

REASONS FOR DENYING THE WRIT

I. To assess agriculture lands for taxation on "fair cash return" instead of "fair cash value" as contended by petitioners would be in direct contravention of section one of article 9 of the Illinois constitution.

Tuttle v. Bell, 377 Ill. 510, 37 N. E. 2d 180, petition for writ of certiorari denied March 2, 1942, 62 S. Ct. 801, 315 U. S. 815, 86 L. Ed. 1213;

Greene v. Louisville & Interurban R. Co., 244 U. S. 499, 37 S. Ct. 673, 680;
People v. Marine Trust Co., 375 Ill. 488, 31 N. E. 2d 933.

II. The method used to assess petitioners' land has been legal in Illinois since 1878 and only a constitutional amendment could change it.

A. Magnano Co. v. Hamilton, 292 U. S. 40, 54 S. Ct. 599;
In re 168 Adams Bldg. Corporation, 105 F. 2d 704;
People v. Hart, 332 Ill. 467, 163 N. E. 769.

III. The complaint of petitioners as amended filed in the State courts does not in substance state a "Federal question" and the petition for the writ should be denied.

Owens v. New York Central R. R., 267 F. Supp. 252;
Insurance Company v. The Treasurer, 78 U. S. 204, 11 Wallace 204;
Gloucester Water Supply Co. v. Gloucester, 193 U. S. 580, 24 S. Ct. 557;
Newburyport Water Co. v. Newburyport, 193 U. S. 561, 24 S. Ct. 553.

The complaint filed below in Peoria county, as amended, does not raise a substantial "Federal question" such as to give this Court jurisdiction. Merely alleging that the Federal constitution has been violated is not sufficient. There must be more than the possibility that constitutional questions may be "lurking" in the background. **Newburyport Water Co. v. Newburyport**, 193 U. S. 561, 24 S. Ct. 553.

A perusal of the record in the case below and in particular the pleadings do not show substantial, essential allegations of constitutional questions. The statements

are mere conclusions and the net result of the case is that there was no showing or proof that the farm land was so overvalued as to amount to constructive fraud but that in every particular the farm land was assessed and taxed in accordance with the law of Illinois. **Insurance Company v. The Treasurer,** 78 U. S. 204, 11 Wallace 204; **Owens v. New York Central Railroad Company,** 267 F. Supp. 252.

To change the method and procedure to assess farm land in Illinois as urged by petitioners would then be in direct violation of the Illinois constitution and discriminate against other taxpayers. Then owners of commercial property would demand the same treatment and to carry the point further, owners of residential property wherein they reside should not be taxed at all. **Tuttle v. Bell,** 377 Ill. 510, 37 N. E. 2d 180.

Petitioners contend that the present method of assessing farm land for taxation is driving them out of business. However, until the Illinois constitution is changed such a possibility does not give the Courts jurisdiction. This is a legislative and not a judicial matter. **A. Magnano v. Hamilton,** 292 U. S. 40, 54 S. Ct. 599; **In re 168 Adams Bldg. Corporation,** 105 F. 2d 704; **People v. Marine Trust Co.,** 375 Ill. 488, 31 N. E. 2d 933.

The fact of assessing land and the improvements thereon separately and then adding them together for the total assessed valuation does not raise any constitutional question. This method is necessary as Illinois assesses lots and lands by the quadrennial system. There can be no change in the assessed valuation during this period unless improvements are built or torn down. Otherwise there would be unjust discrimination. **People v. Hart,** 332 Ill. 467, 163 N. E. 769. Therefore, Section 524, Chapter 120, Illinois Revised Statutes does not violate the due process clause of the Fourteenth amendment to the Federal constitution.

It would seem that the Tuttle v. Bell case above cited should control and the writ in this must be denied as it was in the Tuttle case.

Respectfully submitted

WILLIAM J. SCOTT
Attorney General
State of Illinois

By FRANCIS T. CROWE
Assistant Attorney General
Of Counsel
160 North LaSalle Street
Chicago, Illinois 60600

ROBERT S. CALKINS
State's Attorney of Peoria County
Court House
Peoria, Illinois 61602
Counsel for Respondents